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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SAN BERNARDINO COUNTY,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

A.E. COX,

Real Party in Interest.

E051776

(Super.Ct.No. CIVVS807437)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Steve Malone, Judge.

Petition granted.

Ruth E. Stringer, County Counsel, Paul St. John and Kristina M. Robb, Deputy County Counsel, for Petitioner.

No appearance for Respondent.

Rosa Kwong for Real Party in Interest

INTRODUCTION

In this matter, we have reviewed the petition and the opposition filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

Code of Civil Procedure section 581, subdivision (b)(1), provides a plaintiff with the almost unlimited right to dismiss an action. (See *O'Dell v. Freightliner Corp.* (1992) 10 Cal.App.4th 645, 659.) One primary exception under the statute applies when a defendant has filed a pleading seeking affirmative relief. At the time plaintiffs filed their request to dismiss the entire action on July 30, 2010, real party in interest had not yet filed a cross-complaint although he had had more than a year in which to do so. (See Code Civ. Proc., § 428.50, subd. (a).) As no pleading seeking affirmative relief was on file at the time, real party in interest had no right to block the dismissal. (See *Roski v. Superior Court* (1971) 17 Cal.App.3d 841, 845.)

The trial court's concern that the dismissal was in some way "strategic" was misplaced. If it was intended to block real party in interest's assertion of his claims in this pending action, we can only say, "So what?" Plaintiffs were legally entitled to do so and real party in interest was not entitled to a further opportunity to press his tardy claims. No legal basis existed to vacate the dismissal when entered. (Cf. Code Civ. Proc., § 473.)

We agree that real party in interest was originally entitled to appear as a "Doe" under Code of Civil Procedure section 762.050. However, this right does not allow him to force the plaintiffs to continue the action if plaintiffs do not desire to do so. That statute makes it clear

that a joining party in a quiet title action joins on the side of *defendants* and, thus, cannot control the action. Real party in interest's reliance on *City of Burlingame v. San Mateo County* (1951) 103 Cal.App.2d 885, is misplaced because, in that case, the potential intervenor would have intervened on the *plaintiff's* side. (*Id.* at p. 886.)

DISPOSITION

Accordingly, we conclude that the trial court erred in vacating the dismissal, and we grant the petition.

Let a peremptory writ of mandate issue, directing the Superior Court of San Bernardino County to vacate its order setting aside the dismissal as to all parties that was entered on or about July 30, 2010, to reinstate the dismissal, and to strike the cross-complaint of real party in interest A.E. Cox.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

The stay previously ordered by this court on September 17, 2010, is lifted.

Petitioner to recover its costs.

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HOLLENHORST
Acting P.J.

We concur:

RICHLI
J.

MILLER
J.